

STATE OF TEXAS  
COUNTY OF HIDALGO  
CITY OF MCALLEN

The McAllen Zoning Board of Adjustment and Appeals convened in a Regular Meeting on Thursday, September 26, 2024 at 4:30 p.m. in the McAllen City Hall, Commission Chambers with the following present:

<b>Present:</b>	<b>Jose Gutierrez</b>	<b>Chairperson</b>
	<b>Ann Tafel</b>	<b>Vice-Chairperson</b>
	<b>Hugo Avila</b>	<b>Member</b>
	<b>Juan Mujica</b>	<b>Alternate</b>
	<b>Alex Lamela</b>	<b>Alternate</b>
<b>Absent:</b>	<b>Rogelio Rodriguez</b>	<b>Member</b>
	<b>Hiram A. Gutierrez</b>	<b>Member</b>
	<b>Pablo Garcia</b>	<b>Alternate</b>
	<b>Daniel Santos</b>	<b>Alternate</b>
<b>Staff Present:</b>	<b>Austin Stevenson</b>	<b>Deputy City Attorney</b>
	<b>Edgar Garcia</b>	<b>Planning Director</b>
	<b>Rodrigo Sanchez</b>	<b>Senior Planner</b>
	<b>Samuel Nunez</b>	<b>Senior Planner</b>
	<b>Alexis Martinez</b>	<b>Planner I</b>
	<b>Jessica Puga</b>	<b>Planning Technician II</b>
	<b>Carmen White</b>	<b>Administrative Assistant</b>

**CALL TO ORDER –Chairperson Jose Gutierrez**

**1. MINUTES:**

- a) Minutes for the meeting held on September 12, 2024

The minutes for the meeting held on September 12, 2024. The motion to approve the minutes were made by Vice-Chairperson Ann Tafel. Mr. Alex Lamela seconded the motion, which carried unanimously with five members present and voting.

**2. PUBLIC HEARINGS:**

- a) Request of Melinda Garza on behalf of Bilal Nazif/Reem Alanbari, for a Variance to the City Of McAllen Zoning Ordinance to allow and encroachment of 10 feet into the 25-foot rear yard setback for a proposed single family home at Lot 3, The Embers Subdivision (gated community), Hidalgo County, Texas; 409 Cornell Avenue. (ZBA2024-0032)

Ms. Trevino stated the applicants were requesting a variance to a double fronting lot for a proposed home. The applicants are requesting the variance in order to create more buildable space for the proposed home.

The subject property was located west of North 4<sup>th</sup> Street, between Cornell Avenue and Wisconsin Road. The subject property has 98.0 feet of frontage along both streets and a depth of 112.5 feet for a lot size of 11,025 SF. The adjacent zoning is R-1 (single family

residential) District in all directions. Surrounding land use include single-family residential houses and vacant land.

The Embers Subdivision was recorded on June 6, 2016. The plat specifies that double fronting lots (Lots 1- 5) have a 25 ft. rear yard setback. An application for a variance request for encroachment for a proposed house was submitted to the Planning Department on August 15, 2024.

The variance request was to allow an encroachment of 10 ft. into the 25 ft. rear yard setback for proposed house. The plat for the subdivision specifies a 25 ft. rear yard setback for double fronting lots. City Ordinance Section 138-267(b) states, "where lots have double frontage... a required front yard shall be provided on one street only." The submitted site plan shows the proposed residence will be in compliance with the 25 feet front yard setback along Cornell Avenue. However, an approved variance is still necessary to resolve the plate note setback requirement of 25 feet for the rear yard. Standard rear yard setback in R-1 Districts is 10 ft. There is a 15 ft. Utility Easement at the rear of the lot that will not be impacted by the proposed encroachment. Furthermore, the plat for this subdivision (note 10) states "no curb cut, access, or Lot frontage permitted along North 2<sup>nd</sup> street and along Wisconsin Road."

There are several other similar variance requests on file that were approved in this subdivision at Lots 2, 5, 23, 24, 25, 27, and Lot 28 between 2019 and 2023 that were also double fronting lots.

Staff had not received any phone calls or concerns in regards to the variance request.

Staff recommended approval of the variance request since the required front yard as proposed at 25 feet along Cornell Avenue (and upon issuance of the building permit) will be in compliance with the City of McAllen Zoning Ordinance requirement for double fronting lots.

Ms. Melinda Garza with Monarch Homes, 3818 W. Freddy Gonzalez, Edinburg. She was present on behalf of the property owner and as the potential builder of the home. She stated the property owner had the 25 feet in the front and was requesting for an additional 10 feet in the rear out of the 25 feet that was stated on the plat. The other homes on the same street have the same measurements.

Board member Mujica asked Ms. Garza if this was the design from her company and were they aware of the setbacks. Ms. Garza stated yes. She stated they did one with the 25-foot setback and one with a 15-foot setback. She informed this to the property owner. Board member Mujica asked should this be denied would there be a plan utilized to offer a 25-foot setback. Ms. Garza stated they would have to design it but it would not be what the owner wanted.

Chairperson Jose Gutierrez asked if there was anyone else present to speak in favor of the Variance request. There was no one else to speak in favor of the Variance request.

Chairperson Jose Gutierrez asked if there was anyone else present to speak in opposition of the Variance request. There was no one else to speak in opposition of the Variance request.

Following discussion, Vice-Chairperson Ann Tafel moved to approve the Variance request per staff's recommendation. Mr. Hiram Gutierrez seconded the motion. The Board voted to table the request with five members present and voting.

- b) Request of Jorge Ancer for a Variance to the City of McAllen Zoning Ordinance to allow an encroachment of up to 5 feet into the 20-foot rear yard setback for a proposed spa at Lot 20, Lago Vista Subdivision, Hidalgo County, Texas; 4401 South "M" Street. (ZBA2024-0034)

Ms. Martinez stated the applicant was requesting to encroach up to 5 feet into the 20-foot rear yard setback for a proposed spa. The reason for the variance request is for the property owners to have as much space as possible for their backyard area and allow for more distance between the proposed swimming pool and the main house.

The subject property was located along South "M" street and fronts a partial cul-de-sac at the intersection of South "M" Street and Helena Avenue. The subject property is vacant and is zoned R-1 (single family residential) District. There is R-1 District in all directions except for the area to the East across South Jackson Road, which is in the city limits of Pharr.

Lago Vista Subdivision was recorded on October 31, 2006. An application for a variance request was submitted on August 20, 2024.

The variance request is to allow an encroachment of up to 5 feet (for the proposed spa) into the 20-foot rear yard setback and the actual encroachment area was estimated to be approximately 30 square feet. The spa is part of a proposed swimming pool. The purpose of the variance request is to increase the available backyard area as well as allow for more distance between the proposed swimming pool and the main house.

The plat for this subdivision shows a 10-foot utility easement adjacent to the rear property line that runs concurrently with the 20-foot rear yard setback but the utility easement will not be impacted.

To the East of the property there is a R.O.W. easement. As per the Engineering Department, there are no plans for future expansion to Jackson Road at this specific location.

The subject property is a double frontage lot. City ordinance Section 138-367 (b) states, "where lots have double frontage, a required front yard shall be provided on one street only." A submitted site plan shows the proposed residence will be in compliance with the 25 foot front yard setback.

The standard rear yard setback in an R-1 District was 10 feet as per current Code of Ordinance.

A review of Planning Department records revealed no other variance requests granted within the subdivision.

Staff had not received any phone calls, emails, or letters in opposition to the variance requests.

Staff recommended approval since the lot is an irregular shaped lot and the angle of the adjacent right of way to the east results in a setback that prevents building construction placement to be unlike construction placement in a standard rectangular lot.

Ms. Dulce Pablos, 4401 South "M" Street, Lago Vista Subdivision. She was the property owner. Chairperson Gutierrez informed the owner of the reason for the requirement of the variance. She spoke in favor of the request.

Chairperson Jose Gutierrez asked if there was anyone else present to speak in favor of the Variance request. There was no one else to speak in favor of the Variance request.

Chairperson Jose Gutierrez asked if there was anyone present to speak in opposition of the Variance request. There was no one to speak in opposition of Variance request.

Since the subject, property backs up to Jackson Road, a state highway, Board members Ann Tafel and Juan Mujica stated concerns in the event of future road expansion. Board member Daniel Santos stated in the event that might happen, the property owner(s) run that risk. Board member Tafel stated the proposed pool and spa could be re-designed.

Following discussion, Mr. Hiram Gutierrez moved to approve the Variance request per staff's recommendation. Mr. Daniel Santos seconded the motion. The Board voted with two members voting ayes and three nays, Mr. Alex Lamela, Vice-Chairperson Ann Tafel and Chairperson Jose Gutierrez. The motion did not pass.

At this time, the applicant, Jorge Ancer arrived the meeting while discussion was in progress. He asked permission to address the Board after the vote took place. Mr. Jorge Ancer, pool designer, 3805 E. St. Francis Avenue, stated he understood the concerns of the Board that if variance was granted, anything could be built in the future. Chairperson Gutierrez clarified to Mr. Ancer regarding the variance goes with the land. He stated the owner may not have plans to build anything else but the next owner has the ability to build anything there. He stated even without modifying the design putting the pool closer to the house would fit. Mr. Ancer stated the owner was trying to avoid putting the pool against the house.

Following further discussion, Ms. Ann Tafel moved to disapprove the request. Mr. Alex Lamela seconded the motion. The Board voted with two ayes and three-nays. The motion did not pass.

Following discussion, Vice-Chairperson Ann Tafel moved to table the request in order to allow the applicant time for consideration of site plan modification. Mr. Hiram Gutierrez second the motion. The Board voted unanimously to table the request with five members present and voting.

- c) Request of Rafael Ibanez for a Special Exception to the City of McAllen Zoning Ordinance to allow an encroachment of 21 feet into the 25-foot front yard setback for a proposed carport measuring 20 feet by 20 feet at Lot 68, Saddle Creek Unit 2 Subdivision, Hidalgo County, Texas; 3104 Ozark Avenue. (ZBA2024-0033)

Ms. Martinez stated the applicant was requesting a Special Exception to allow an encroachment of 21 feet into the 25-foot front yard setback for a proposed metal carport measuring 20 feet by 20 feet. The carport is proposed to provide adverse weather

protection for the applicant's vehicle and shade for a family member with a medical condition.

The subject property was located along the North side of Ozark Avenue approximately 61 feet west of North 31<sup>st</sup> Street. The lot has 60.10 feet of frontage along Ozark Avenue and 83.25 feet of depth for a total lot size of 5,003 square feet. The subject property is zoned R-1 (single-family residential) District. The adjacent zoning is R-1 District in all directions.

Saddle Creek Unit 2 Subdivision was recorded February 10, 2003 and requires a 25-foot front yard setback. According to the Hidalgo County Appraisal District, the house was built with a one-car garage in 2005. On August 15, 2024, the applicant submitted an application for a building permit for the proposed carport; however, the site plan shows the carport with an encroachment into the 25-foot front yard setback. On August 19, 2024, the applicant applied for a Special Exception for an encroachment of 21 feet into the 25-foot front yard setback.

The applicant was requesting a Special Exception to allow an encroachment of 21 feet into the 25-foot front yard setback for a proposed metal carport measuring 20 feet by 20 feet for a total of 400 square feet in size.

The applicant stated that the following are reasons for the request: **1)** the proposed metal carport is to provide vehicle protection from severe weather conditions. **2)** the one-car garage that was built with the house does not provide sufficient space to allow adequate egress/ingress for a family member with medical conditions and **3)** the proposed carport will provide shade for this family member.

The front yard setbacks are important in establishing the character of a single-family neighborhood by providing landscaping to enhance the residence and curb appeal of the street view.

The applicant does not have access to an alley to have the proposed carport constructed at the rear of the property.

Special Exceptions are issued to and recorded for the present owner only. New property owners would need to apply for a new Special Exception request.

Staff had not received any phone calls or emails with concerns in regards to the Special Exception request.

Staff recommended disapproval of the request since there are no other carports constructed along this block. Approval of the request may encourage other property owners to build similar structures.

Mr. Rafael Ibanez, the applicant, 3104 Ozark Avenue, stated the purpose for the carport was for his father who suffers from lung disease and required the use of an oxygen tank does not have enough space in the existing garage allow proper access to the car.

Board member Mujica asked the applicant who was going to build the carport. Mr. Ibanez stated he was going to hire a contractor.

Chairperson Jose Gutierrez asked if there was anyone else present to speak in favor of



the Special Exception request. There was no one else to speak in favor of the Special Exception request.

Chairperson Jose Gutierrez asked if there was anyone present to speak in opposition of the Special Exception request. There was no one to speak in opposition of the Special Exception request.

Following discussion, Vice-Chairperson Ann Tafel moved to approve the Special Exception request. Mr. Hiram Gutierrez seconded the motion. The Board voted to approve the request with five members present and voting.

- d) Request of Michael & Iris Hines for a special exception to the City of McAllen Zoning Ordinance to allow an encroachment of 11.4 feet into the 20 foot front yard setback for an existing metal carport measuring 24 feet by 19 feet at Lot 23, Arthur Terrace Subdivision, Hidalgo County, Texas; 5916 North 36th Lane. **(ZBA2024-0030)**  
**(TABLED: 09/12/2024)**

Mr. Daniel Santos moved to remove the item from the table. Mr. Alex Lamela seconded the motion. The Board voted unanimously with five members present and voting.

Ms. Martinez stated the applicants were requesting a Special Exception to allow an encroachment of 11.4 feet into the 20-foot front yard setback for an existing metal carport measuring 24 feet by 19 feet totaling 456 square feet in size. The reason for the request is for protection of the vehicles from severe weather elements. Vehicle protection is needed because one of the vehicles hauls a travel trailer, which was used to provide sleeping, cooking, bathing and medical safety accommodations for a kidney transplant recipient as they travel frequently to out of town doctor appointments.

The subject property was located along the east side of North 36<sup>th</sup> Lane approximately 76 feet north of Gull Avenue. The Lot had 75 feet of frontage along North 36<sup>th</sup> Lane and a depth of 100 feet for a total Lot size of 7,500 square feet. The subject property was zoned R-1 (single family residential) District and there is R-1 District in all directions.

Arthur Terrace Subdivision was recorded on June 22, 1982. The plat states a front yard setback of 20 feet. According to Hidalgo County Appraisal District, the house was built in 1990 with a two-car garage. A building permit application was submitted on July 26, 2024 but did not receive approval since the carport was shown to be encroaching into the 20-foot front yard setback. A Special Exception request application was then submitted on August 1, 2024 to allow an encroachment of 11.4 feet into the 20-foot front yard setback for the existing metal carport.

The Special Exception request was for an existing metal carport measuring 24 feet by 19 feet totaling 456 square feet in size. It encroaches 11.4 feet into the 20 feet front yard setback. The applicants would like the carport to remain for protection of the two vehicles from adverse weather conditions. The family owns two large Dodge Ram trucks that do not fit into their built-in house garage. One of the vehicles hauls a travel trailer for a family member with a medical condition. The carport provides protection for the individual as they access the vehicle to and from doctor appointments.

The current built-in two-car garage is used in part for storage and parking for a smaller truck.

The property owner states that a contractor was hired in 2022 for the construction of the carport and assured the applicants that he would take care of obtaining the permit himself. Subsequently, the residents learned that a building permit had not been obtained.

Building Permits and Inspections Staff issued a stop work order on July 25, 2024 for the carport being built without a permit.

During a site visit of Arthur Terrace Subdivision, Staff noticed one other carport with an encroachment along North 36<sup>th</sup> Street. A review of Planning Department records revealed a Special Exception was previously requested to allow an encroachment of 20 feet into the 20-foot front yard setback for an existing carport for Lot 53. The request was disapproved at the Zoning Board of Adjustments and Appeals meeting on December 20, 2023.

Front yard setbacks help keep the character of single-family residential areas by maintaining the street yard and curb appeal of properties in a subdivision.

Zoning ordinance Sec. 138-371(g) for Special Exceptions of carports states that no carport for which a Special Exception has been granted under this subsection shall exceed 400 square feet in size. The carport on the subject property was 456 square feet.

There is no alley at the rear of the property that would allow for relocation of the carport out of the front yard setback.

Staff had not received any phone calls or concerns in regards to the Special Exception request.

Special Exceptions are issued to and recorded for the present applicants only. A change in property ownership would require the new owner to apply for a new Special Exception.

Measurements provided are with the benefit of a survey.

Staff recommended disapproval of the Special Exception request since there are no other carports built with an issued building permit in this subdivision.

**Zoning Board of Adjustment and Appeals, meeting of September 12, 2024**

At the Zoning Board of Adjustment and Appeals, meeting of September 12, 2024 no one appeared in opposition of the special request. Board member Mujica stated his biggest concern with this request was the size of the carport, which exceeded 400 square feet. Mrs. Iris Hines, the applicant, stated she had understood the encroachment to be 9 feet instead of 11.4 feet as presented by staff. Austin Stephenson, Deputy City Attorney, advised the Board to consider tabling the request in order to allow time for the applicants and staff to clarify the measurements. The Board voted to table the request with five Board members present and voting.

Subsequent to the meeting, the applicants met with staff to clarify the carport dimensions and encroachment. The applicants confirmed that the encroachment and dimensions as presented by staff were correct. Staff also conveyed to the applicant that the Board had stated a concern regarding the size of the carport exceeding 400 square feet. Subsequent to this, the applicants submitted a revised site plan showing the

carport with dimensions of 19 feet by 21 feet. The new reduced carport size in area was 399 square feet. The new revised proposed encroachment is 8.4 feet representing a reduction in the encroachment by 3 feet.

Chairperson Gutierrez asked staff if the applicants signed a document stating that they were going to reduce the carport. Staff stated there was a revised site plan showing the new measurements.

Mr. & Mrs. Michael & Iris Hines, the applicants, 5916 North 36<sup>th</sup> Lane. Chairperson Gutierrez asked them that they had accepted to reduce the size of the carport. They responded yes. She reiterated to the Board members who were not present at the last meeting regarding her husband's medical condition and the events leading up the building of the existing carport.

Chairperson Jose Gutierrez asked if there was anyone else present to speak in favor of the Special Exception request. There was no one else to speak in favor of the Special Exception request.

Chairperson Jose Gutierrez asked if there was anyone else present to speak in opposition of the Special Exception request. There was no one to speak in opposition of the Special Exception request.

Following discussion, Mr. Hiram Gutierrez moved to approve the Special Exception request with the revised plan showing the size reduction to 399 square feet and a reduced encroachment of 8.4 feet into the 20-foot front yard setback. Mr. Alex Lamela seconded the motion. The Board voted to approve the request with five members present and voting.

#### ADJOURNMENT

There being no further business to come before the Zoning Board of Adjustment and Appeal, Chairperson Jose Gutierrez moved to adjourn the meeting.



Carmen White, Administrative Assistant



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Chairperson Jose Gutierrez